



RSPA-2002-12629-1

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April 26, 2000

Robert A. McGuire
Deputy Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration
U.S. Department of Transportation
Office of Hazardous Materials Standards
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: Petition for Rulemaking

Dear Mr. McGuire:

In accordance with 49 CFR 106.31, the American Crop Protection Association (ACPA), the Mid America Crop Protection Association (MACPA), the Southern Crop Production Association (SCPA) and the Western Crop Protection Association (WCPA), jointly submit this petition for rulemaking on 49 CFR 172.303(b) and 172.401(c). ACPA is a nonprofit, trade association representing on national basis companies who manufacture, formulate and distribute crop protection products used in U.S. agricultural production. MACPA, SCPA and WCPA represent our industry within their respective geographic regions.

Subparagraphs 49 CFR 172.303(b) and 49 CFR 172.401(c) permit shipments of non-hazardous materials in the U.S., as defined in the U.S. DOT Hazardous Materials Regulations. These shipments are marked and labeled as "dangerous goods" under the Canadian Transport of Dangerous Goods Regulations, International Air and Ocean Regulations or the UN Recommendations on the Transport of Dangerous Goods. Even with the revision to International Maritime Dangerous Goods (IMDG) Code which permits materials subject to other transport regulations to be shipped as Class 9 materials, difficulties still exist when shipping materials between the United States and Europe. These are either regulated under the European Road/Rail RID/ADR Regulations or the U.S. DOT Hazardous Materials Regulations, but not both.

Special Provision 179 of the "UN Recommendations on the Transport of Dangerous Goods" states that Class 9 materials are to be designated by each country's competent authority. Therefore, when a European country designates a material as "environmentally hazardous" and makes it subject to its transportation regulations, then the labeling of packages containing that material with the CLASS 9 label is provided for under the UN Recommendations. Thus, should not be a prohibited display in accordance with 49 CFR 172.401(c).

49 CFR 172.303 prohibits the offering for transportation or the transport of packages which are marked with the proper shipping name or identification number of a hazardous material unless the packages are not visible during transportation or the markings are securely covered. A package containing a material which is regulated only under the European Road or Rail RID/ADR Regulations and marked with a proper shipping name or identification number are not permitted in a public warehouse since this storage is incidental to transportation.

We realize that a material regulated as a Class 9 material under the European Road or Rail RID/ADR Regulations may be classified as a dangerous good under the IMDG Code. However, our member companies would prefer to ship this type of material as non-hazardous both by international air and ocean and within the United States even though it is marked and labeled as a Class 9 material in Europe because of the higher freight cost for hazardous materials.

We estimate that the process of de-palletizing packages, marking or covering markings on packages and then re-palletizing costs approximately \$1.00 per package. We further estimate that the additional freight cost involved in classifying materials as "dangerous goods" in accordance with the first "Observation" on IMDG Code pages 9028 and 9029 would be an even higher cost option. The approximate one million packages per year that are impacted by either remarking, covering of markings or shipment as dangerous goods under the IMDG Code when only regulated as hazardous materials under the RID/ADR regulations can result in costs up to \$1 million per year.

It is therefore proposed that a package, under the following circumstances, be authorized for transportation as a non-hazardous material in transportation, and in storage incidental to transportation under 49 CFR 172.303(b) and 172.401(c):

- If a package is marked "Environmentally hazardous substance, solid, n.o.s., UN3077" or "Environmentally hazardous substance, liquid, n.o.s., UN3082";
- If a package displays a CLASS 9 label; and
- If a package contains a material regulated only under the European Road or Rail RID/ADR Regulations be

As such, it is recommended that 49 CFR 172.303(b)(4) be added to read as follows:

(4) Any packages marked in conformance with:

- (i) Any United Nations recommendation, in the document entitled "Transport of Dangerous Goods;"
- (ii) The International Maritime Organization (IMO) requirements, in the document entitled "International Dangerous Goods Code;"

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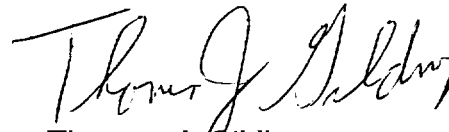
- (iii) The ICAO Technical instructions;
- (iv) The TDG Regulations; or
- (v) The RID/ADR Regulations.

Also, it is also recommended that 49 CFR 172.401(c)(5) be added to read as follows:

- (5) The RID/ADR Regulations.

Thank you for your consideration of this petition. If you have any questions concerning this petition, please call me at (202) 872-3873.

Respectfully submitted,



Thomas J. Gilding
Director, Environmental Affairs

TJG/trg